

Item SPR05-01 Response Form

Title: Request for Reasonable Accommodation(s) by Persons With Disabilities (amend Cal. Rules of Court, rule 989.3; revise form MC-410)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

| |
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| DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2005 |
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action..*

Invitation to Comment (SPR05-01)

| | |
|------------|--|
| Title | Request for Reasonable Accommodation(s) by Persons With Disabilities (amend Cal. Rules of Court, rule 989.3; revise form MC-410) |
| Summary | The proposed amendment to rule 989.3 and the corresponding form MC-410 would clarify the process and procedures for persons with disabilities to request reasonable accommodations. |
| Source | Access and Fairness Advisory Committee |
| Staff | Donna Clay-Conti, 415-865-7911; donna.clay-conti@jud.ca.gov Linda McCulloh, 415-865-7746, linda.mcculloh@jud.ca.gov |
| Discussion | <p>Rule 989.3 of the California Rules of Court, adopted January 1, 1996, describes the process by which people with disabilities may request a reasonable accommodation to access the court's programs, services, or activities. The committee recommends certain clarifications to increase uniformity and effectiveness in applying the rule, and to conform the rule to legislative changes.</p> <p>Under the Americans with Disabilities Act (ADA) (43 U.S.C. § 12101 et seq.), a "qualified individual" is defined as someone who has an impairment that <i>substantially</i> limits a major life activity. California law previously mirrored the ADA, but in 2001 a statutory change broadened the definition of <i>an individual with a disability</i> and eliminated the <i>substantial</i> limitation requirement for a major life activity. California law requires only a limitation of a major life activity and does not use the term "qualified individual." (Assem. Bill 2222; Civ. Code, §51 et seq.) The proposed amendments to this rule would reflect this change.</p> <p>In 2001, the Access for Persons With Disabilities Subcommittee of the Access and Fairness Advisory Committee embarked on a study to determine what, if any, amendments or changes should be made to rule 989.3 based on the courts' experiences with implementing the rule since its adoption in January 1996. The survey was sent to judges, court staff, and Access or ADA Coordinators (persons designated by the court to handle reasonable accommodation requests).</p> <p>The survey results indicate that while the rule is effective in providing access to people with disabilities, clarification in certain areas would improve the uniformity of application. The portions of the rule needing clarification include the definitions, process, permitted</p> |

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communications, and notice of the disposition of the request.
The proposed amendments will:

- Clarify the rule's definition of a covered *individual* and delete the word "qualified" before "individual with disabilities" to conform to California law.
- Amend the definition of *accommodation* to indicate that sign language interpreters must be certified, pursuant to Evidence Code section 754(f) and (h); and clarify that alteration of existing facilities by the responsible entity may be an accommodation.
- Delete the term, "the acquisition or construction of additional facilities" as a method of accommodation described in (b)(3) because although responsibilities for court facilities is in the process of transitioning to the state, court facilities presently are the responsibility of the counties, not the courts. In addition, in the context of a request for accommodation by a court user, it is unlikely that acquisition or construction of additional facilities would be a reasonable or necessary accommodation.
- Clarify that a request may be made in *any* "written format," on the MC-410 form, or orally.
- Direct requests for accommodations to the ADA or Access Coordinator, who has been designated by each court, so as not to delay the handling of the request.
- Eliminate the need for the court to seal information because some accommodation requests may be oral and therefore cannot be sealed.
- Clarify that the court is required to keep confidential all information of the accommodation(s) request, unless written waiver is obtained or disclosure is required by law.
- Clarify that the type of permitted communication between the requestor and the court is limited to the accommodation request and may not address the subject matter or the merits of the proceedings before the court so as not to constitute an improper ex parte communication.

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- Clarify that discovery of information relating to a request for accommodation, as provided by law, is not limited by this rule.
- Clarify that the court's disposition of an accommodation request must be in writing and in an alternative format, such as large print, where appropriate.
- Require that the duration of the granted accommodation be indicated on the notice of the court's disposition.

The committee believes the clarification and simplified language will greatly improve the effective application of rule 989.3. The proposed amendment will not result in any new administrative costs to the courts.

Form MC-410, *Request for Accommodation(s) by Persons With Disabilities and Response*, is an optional form. This form would be revised to conform to the proposed rule amendment as follows:

- Addition of "Form to Be Kept Confidential and in a File Separate From Case File" at the top of the form and deleted "Form to Be Kept Confidential (if box checked)" to conform to rule 989.3(c)(4) (note: subdivision (c)(4) allows the confidentiality provision to be waived in writing);
- Deletion of "7. I request that my identity ☐ be kept CONFIDENTIAL ☐ NOT be kept CONFIDENTIAL" to conform to amended subdivision (c)(4) of rule 989.3;
- Replace "Order" with "Response" to conform to subdivision (g)(1), which allows nonjudicial court personnel (court executive officers and ADA or Access Coordinators) to respond to the request for accommodation;
- Deletion of "OF JUDICIAL OFFICER" after "NAME" and "SIGNATURE" to conform to subdivision (g)(1), which allows nonjudicial court personnel (court executive officers or ADA/Access Coordinators) to respond to the request for accommodation;
- Reformatting and numbering items 7 through 10;

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- Addition of item 8 to clarify the duration of the accommodation to conform to amended subdivision (h) of rule 989.3;
- Addition of item 10 to provide space for explaining the reason for the denial, to conform to amend subdivision (e)(2) of rule 989.3;
- Addition of “ SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE” for responses that exceed one page; and
- Clarification that the form is for optional use and not mandatory by indicating that the form is “approved” by the Judicial Council to conform to amended subdivision (c)(1) rule 989.3 (note: the form always had been optional and was previously inadvertently labeled as “approved”).

The text of the proposed amended rule and the proposed revised form MC-410 are attached at pages 5 to 9.

Attachments

Rule 989.3 of the California Rules of Court would be amended, effective January 1, 2006, to read:

Rule 989.3. Requests for accommodation(s) by persons with disabilities

(a) **[Policy]** ~~It shall be~~ is the policy of the courts of this state to assure that ~~qualified~~ individuals with disabilities have equal and full access to the judicial system. To ensure access to the courts by persons with disabilities, each superior and appellate court must designate at least one person to be the ADA Coordinator, also known as the Access Coordinator, to address reasonable accommodation requests. ~~Nothing in this rule shall be construed~~ This rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to ~~any qualified~~ individuals with disabilities under state or federal law.

(b) **[Definitions]** The following definitions ~~shall~~ apply under this rule:

(1) ~~“Qualified Individuals with disabilities”~~ means persons covered by the California Civil Code section 51 et seq. and, Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); ~~Civil Code section 51 et seq.; and or other related~~ applicable state and federal laws; and . This definition includes individuals who have a physical or mental impairment that substantially limits one or more of the major life activities; , have a record of such an impairment; , or are regarded as having such an impairment.

(2) “Applicant” means any lawyer, party, witness, juror, or any other individual with an interest in attending any proceeding before any court of this state.

(3) “Accommodations(s)” mean actions that result in court services, programs, or activities being readily accessible to and usable by individuals with disabilities. Accommodation(s) may include, but are not limited to, making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to qualified individuals with disabilities, auxiliary aids and services, which are not limited to equipment, devices, materials in alternative formats, and qualified interpreters or readers or certified interpreters; relocating services or programs to accessible facilities; or providing services at alternate sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation. ~~and making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations.~~

1 While not requiring that each existing facility be accessible, this standard,
2 known as “program accessibility,” must be provided by methods including
3 alteration of existing facilities, acquisition or construction of additional
4 facilities, relocation of a service or program to an accessible facility, or
5 provision of services at alternate sites.

6
7 (4) The “Rule” means this rule regarding requests for accommodations in any
8 state courts by qualified individuals with disabilities.

9
10 (5) “Confidentiality” applies to the identity of the applicant in all oral or
11 written communications, including all files and documents submitted by an
12 applicant as part of the application process.

13
14 (c) [Process] The following process for requesting accommodation(s) is
15 established:

16
17 (1) ~~Applications requesting~~ Requests for accommodations(s) pursuant to this
18 rule may be presented ex parte ~~in writing~~, on a form approved by the
19 Judicial Council or in other written format and provided by the court, or
20 orally as the court may allow appropriate. Applications Requests should
21 must be made directed at the designated Office of the Clerk, or to the
22 courtroom clerk or judicial assistant where the proceeding will take place,
23 or to the judicial officer who will preside over the proceeding to the ADA
24 Coordinator, also known as the Access Coordinator, within the time frame
25 provided in subdivision (c)(3).

26
27 (2) ~~All applications~~ Requests for accommodations shall must include a
28 description of the accommodation sought, along with a statement of the
29 impairment that necessitates such accommodation. The court, in its
30 discretion, may require the applicant to provide additional information
31 about the qualifying impairment.

32
33 (3) ~~Applications~~ Requests for accommodations should must be made as far in
34 advance of the requested accommodations implementation date as
35 possible, and in any event ~~should~~ must be made no less fewer than five
36 court days ~~prior to~~ before the requested implementation date. The court
37 may, in its discretion, waive this requirement.

38
39 (4) ~~Upon request, The court shall~~ must place under seal the identity of the
40 applicant as designated on the application form and all other identifying
41 information provided to the court pursuant to the application keep
42 confidential all information of the applicant requesting concerning the
43 request for accommodation, unless waived in writing by the applicant or

1 required by law to be disclosed. Confidential information may not be
2 disclosed to persons other than those involved in the accommodation
3 process. Confidential information includes the applicant's identity, all
4 medical information concerning the applicant, and oral or written
5 communication from an applicant concerning the request for
6 accommodation(s). The confidential information must be kept in a file
7 separate from the case file and maintained by the Access Coordinator or
8 designee. Nothing in this rule limits or precludes discovery, as provided
9 by law, of information relating to the request for accommodation(s).

10
11 **(d) [Permitted communication]** ~~An applicant may make ex parte~~
12 ~~communications with the court; such~~ Communications under this rule shall
13 must deal address only with the applicant's request for accommodations(s) the
14 ~~applicant's disability requires~~ and shall must not deal address, in any manner,
15 ~~with the subject matter or merits of the proceedings before the court.~~

16
17 **(e) [Grant of Providing an accommodation]** ~~A court shall must grant respond to~~
18 a request for accommodation as follows:

19
20 (1) In determining whether to ~~grant~~ provide an accommodation and what
21 accommodation request to grant, the court shall must consider, but is not
22 limited by, California Civil Code section 51 et seq., the provisions of the
23 Americans with Disabilities Act of 1990, and other related applicable state
24 and federal laws.

25
26 (2) The court ~~shall must~~ inform the applicant in writing of findings of fact and
27 orders, in writing and, if appropriate, in an alternative format, as may be
28 appropriate, of the following: (a) that whether the request for
29 accommodation(s) is granted or denied, in whole or in part; and (b) the
30 nature of the accommodations(s) to be provided, if any; and (c) the
31 duration of the accommodation(s) to be provided.

32
33 **(f) [Denial of accommodation request]** ~~An application~~ A request for
34 accommodation(s) may be denied only if when the court finds determines
35 that:

36
37 (1) The applicant has failed to satisfy the requirements of this rule; or

38
39 (2) The requested accommodations(s) would create an undue financial or
40 administrative burden on the court; or

41
42 (3) The requested accommodations(s) would fundamentally alter the nature
43 of the service, program, or activity.

1
2 **(g) [Review procedure]**
3

4 (1) An applicant or any participant in the proceeding in which an
5 accommodation request has been denied or granted may seek review of a
6 determination made by nonjudicial court personnel within 10 days of the
7 date of the response ~~notice of denial or grant~~ by submitting, in writing, a
8 request for review to the ~~judicial officer~~ presiding judge or designee, who
9 ~~will preside over the proceeding or to the presiding judge if the matter has~~
10 ~~not been assigned.~~

11
12 (2) An applicant or any participant in the proceeding in which an
13 accommodation request has been denied or granted may seek review of a
14 determination made by a presiding judge or ~~any~~ other judicial officer ~~of a~~
15 ~~court~~ within 10 days of the date of the notice of determination ~~denial or~~
16 ~~grant~~ by filing a petition for extraordinary relief in a court of superior
17 jurisdiction.
18

19 **(h) [Duration of accommodation(s)]** If the accommodation(s) is granted, the
20 ~~court shall~~ must commence provide the accommodation(s) on the date
21 indicated in the ~~notice of~~ response to the request and the accommodation shall
22 must remain in effect for the period specified. ~~in the notice of~~
23 ~~accommodation.~~ The court may ~~grant~~ provide accommodation(s) for indefinite
24 periods of time, limited periods of time, or for a particular matter or
25 appearance.

| | | |
|---|--|---|
| APPLICANT (name): APPLICANT is <input type="checkbox"/> Witness <input type="checkbox"/> Juror <input type="checkbox"/> Attorney <input type="checkbox"/> Party <input type="checkbox"/> Other Person submitting request (name): APPLICANT'S ADDRESS: TELEPHONE NO.: | | FOR COURT USE ONLY <h1 style="text-align: center;">DRAFT 9</h1> <h2 style="text-align: center;">04-18-05</h2> Not approved by the Judicial Council |
| NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | | |
| NAME OF JUDGE: | | |
| CASE NAME: | | DEPARTMENT: |
| REQUEST FOR ACCOMMODATION(S) BY PERSONS WITH DISABILITIES AND RESPONSE | | CASE NUMBER: |

Applicant requests accommodation under rule 989.3 of the California Rules of Court, as follows:

1. Type of proceeding: ☐ Criminal ☐ Civil
2. Proceedings to be covered (*for example, bail hearing, preliminary hearing, trial, sentencing hearing*):
3. Dates ☐ (s) needed (*specify*):
4. Impairment necessitating accommodation(s) (*specify*):
5. Type of accommodation(s) requested (*be specific*):
6. Special requests or anticipated problems (*specify*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

RESPONSE

7. The court determines that the ☐ requested accommodation ☐ alternate accommodation (*specify*):

 a. ☐ does not create an undue burden on the court.
 b. ☐ does not fundamentally alter the nature of the service, program, or activity.
8. Therefore, the accommodation request is GRANTED for the following duration:
 a. ☐ for the above matter or appearance.
 b. ☐ from _____ to _____.
 c. ☐ indefinite period.
9. The court finds that the accommodation request:
 a. ☐ fails to satisfy the requirements of rule 989.3.
 b. ☐ creates an undue burden on the court.
 c. ☐ fundamentally alters the nature of the service, program, or activity.
10. Therefore, the accommodation request is DENIED for the following reason (*attach additional pages, if necessary*):

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE)

☐ SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE.